

**United States Department of Labor
Employees' Compensation Appeals Board**

L.B., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
REGIONAL OFFICE, St. Petersburg, FL,
Employer**

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**Docket No. 06-1495
Issued: October 20, 2006**

Appearances:

*William Hackney, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 19, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 18, 2005 and May 30, 2006 merit decisions terminating her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation effective August 17, 2005 on the grounds that she had no physical residuals of her December 14, 2004 acute cervical strain.

FACTUAL HISTORY

On December 20, 2004 appellant, then a 55-year-old rating specialist, filed a traumatic injury claim alleging that she sustained injury when she lifted files over her head at work on December 14, 2004. Appellant stopped work on December 16, 2004.

The findings of December 17, 2004 x-ray testing revealed multilevel degenerative disc disease of the cervical spine with no fractures or dislocations noted. A December 17, 2004 magnetic resonance imaging scan revealed a small paracentral disc protrusion at C4-5 and a mild posterior disc bulging at C5-6.

In a report dated December 22, 2004, Dr. Walter E. Afield, an attending Board-certified psychiatrist and neurologist, stated that appellant did not show any serious neurological sequelae on examination and that she had an acute cervical strain. In a report dated January 11, 2004, he diagnosed severe anxiety reaction and dysthymic reaction and stated, "From my standpoint, her emotional state restricts her from working and I cannot tell how long that will be until I know more about her physical situation." On January 13, 2004 Dr. Afield summarized the findings of Dr. Thomas Esposito, an attending Board-certified orthopedic surgeon, who felt that appellant was totally disabled. He indicated that appellant's only positive findings on examination were reported pain extending from the neck into the left arm and decreased sensation in the C6 nerve distribution. Dr. Afield stated that it had been confirmed that appellant sustained an injury at work.

The Office accepted that appellant sustained an acute cervical strain on December 14, 2004 and paid her appropriate compensation.

In a report dated February 18, 2005, Dr. Afield provided a summary of appellant's treatment to that date and stated that "seeing her today indicates a woman who is totally disabled." He added, "She has both a physical and mental condition and they are work related. She spends all of her time crying."

The Office referred appellant to Dr. Michael Slomka, a Board-certified orthopedic surgeon, for further evaluation of her medical condition. It also referred her to Dr. Gary K. Arthur, a Board-certified psychiatrist, for further evaluation of her emotional condition. In a report dated March 23, 2005, Dr. Arthur diagnosed an adjustment reaction with depression and anxiety due to the December 14, 2004 injury. Based on this report, the Office accepted that appellant sustained an adjustment reaction with depression and anxiety.

In a report dated April 7, 2005, Dr. Slomka described appellant's December 14, 2004 employment injury and detailed her medical history including results of her physical examinations and diagnostic testing. A December 17, 2004 diagnostic testing showed a disc bulge at C4-5, a probable herniation at C5-6, and significant spinal stenosis and foraminal stenosis, especially at C5-6 and C6-7. Dr. Slomka noted that appellant reported that she had numbness and tingling that went into her left thumb and second and third fingers, that she had frequent left-sided headaches, and that she had "hot stabbing pain" in her left scapula if she held her head straight for any length of time. Appellant presented to him with her head tilted dramatically to the right side. Dr. Slomka indicated that appellant had a fairly good range of left arm motion, that her grip strength was adequate, and that deep tendon reflexes were symmetrical. Appellant's pinprick sensation was "bizarre" in that she complained of decreased sensation over both arms in a circumferential manner and had pinprick sensation over the fingers of both hands with the exception of the web spaces of both thumbs.

Dr. Slomka stated that appellant's December 14, 2004 acute cervical strain should have resolved and that "she does have significant spinal stenosis and bulging in the cervical spine which in my opinion preexisted the December 14, 2004 accident and which is responsible for her symptoms." He found that appellant could not work due to these conditions which were not related to her December 14, 2004 employment injury, listing her preexisting degenerative condition, her subjective pain complaints and the "bizarre positional abnormality in her neck." Dr. Slomka indicated that appellant's subjective complaints outweighed the objective findings and posited that the December 14, 2004 injury had temporarily aggravated her underlying condition.¹

In several reports dated between March and June 2005, Dr. Stephen C. Howard and Dr. Omar Inaty, both attending chiropractors, diagnosed appellant with cervical subluxations and disc bulges. They did not clearly state whether these conditions were diagnosed from x-ray testing taken around the time of appellant's December 14, 2004 injury.

By notice dated July 7, 2005, the Office advised appellant of its proposed termination of her compensation relating to her acute cervical strain because she no longer had physical residuals of that injury. The weight of the medical evidence regarding this matter rested with the opinion of Dr. Slomka. It stated that it was not terminating appellant's compensation with respect to her accepted emotional condition.

Appellant submitted a May 1, 2005 form report in which Dr. Afield stated that she could not work eight hours per day because she had severe depression and chronic pain from a cervical disc work injury.² In a form report dated July 21, 2005, Dr. Afield indicated that appellant would "never return to work due to chronic pain and depression."

In a report dated July 26, 2005, Dr. Afield reviewed Dr. Slomka's April 7, 2005 report and stated that there was a "slight discrepancy," as he disagreed with Dr. Slomka and felt that appellant had no symptoms prior to her December 14, 2004 accident. He stated that once the accident occurred "she did develop the discs" and that he could not see how appellant's cervical disc condition could be interpreted as a preexisting condition. Dr. Afield stated, "This accident caused something to bulge the discs and now they are talking surgery. To me that is disabled."

By decision dated August 18, 2005, the Office finalized the termination of appellant's compensation effective August 17, 2005 finding that she had no physical residuals of her December 14, 2004 acute cervical strain. The Office again indicated that the weight of the medical evidence rested with the opinion of Dr. Slomka and that it was not terminating compensation with respect to the accepted emotional condition.

Appellant requested a hearing before an Office hearing representative which was held on April 4, 2006. She testified that she continued to have a disabling employment-related neck

¹ In a supplemental report dated April 27, 2005, Dr. Slomka stated that the December 14, 2004 injury caused a temporary aggravation of appellant's condition and that "this temporary aggravation had subsided and resolved and symptoms are now due to the underlying problems which preexisted that accident."

² In another report dated May 1, 2005, Dr. Afield stated that he agreed with Dr. Arthur's assessment of appellant's emotional condition.

condition. Appellant submitted additional reports in which Dr. Afield indicated that she continued to have cervical problems and stated that she was totally disabled.

By decision dated and finalized May 30, 2006, the Office hearing representative affirmed the August 18, 2005 decision.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,³ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

ANALYSIS

The Office accepted that appellant sustained an acute cervical strain on December 14, 2004. It terminated appellant's compensation effective August 17, 2005 on the grounds that she had no physical residuals of her December 14, 2004 acute cervical strain after that date. The Office based its termination on the opinion of Dr. Slomka, a Board-certified orthopedic surgeon who served as a referral physician.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Slomka. The April 7 and 27, 2005 reports of Dr. Slomka establish that appellant had no physical residuals of her December 14, 2004 acute cervical strain after August 17, 2005.⁷

Dr. Slomka noted that appellant reported that she had numbness and tingling that went into her left thumb and second and third fingers, that she had frequent left-sided headaches, and that she had "hot stabbing pain" in her left scapula if she held her head straight for any length of time. Appellant also presented to him with her head tilted dramatically to the right side. She had fairly good range of left arm motion, her grip strength was adequate, and that deep tendon reflexes were symmetrical. Dr. Slomka stated that appellant's pinprick sensation was "bizarre" in that she complained of decreased sensation over both arms in a circumferential manner and had pinprick sensation over the fingers of both hands with the exception of the web spaces of both thumbs. Dr. Slomka concluded that appellant's December 14, 2004 employment injury had

³ 5 U.S.C. §§ 8101-8193.

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ The Board notes that appellant's compensation is not terminated with respect to the emotional condition that was accepted in connection with her December 14, 2004 injury.

resolved and had only served to temporarily aggravate her preexisting degenerative cervical condition.

The Board has carefully reviewed the opinion of Dr. Slomka and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Slomka's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence.⁸ He provided medical rationale for his opinion by explaining that appellant's December 14, 2004 injury was of such a nature that it would have long since resolved itself. Dr. Slomka further explained that appellant's continuing neck problems were due to nonwork-related conditions, including a significant spinal stenosis and bulging and herniated cervical discs which preexisted the December 14, 2004 injury. He noted that a number of appellant's complaints were subjective in nature and not supported by objective evidence. Dr. Slomka indicated that appellant could not work, but that this disability was due to conditions which were not related to her December 14, 2004 employment injury, including her preexisting degenerative condition, her subjective pain complaints, and the "bizarre positional abnormality in her neck."

Appellant submitted several reports in which Dr. Afield, an attending Board-certified psychiatrist and neurologist, indicated that she continued to be disabled due to physical residuals of her December 14, 2004 employment injury. In a May 1, 2005 form report, Dr. Afield stated that appellant could not work eight hours per day because she had severe depression and chronic pain from a cervical disc work injury and, in a July 21, 2005 form report, Dr. Afield indicated that appellant would "never return to work due to chronic pain and depression." In a July 26, 2005 report, Dr. Afield posited that the December 14, 2004 accident caused appellant to have bulging cervical discs and indicated that this disc condition continued to cause disability.

These reports, however, are of limited probative value on the relevant issue of the present case in that Dr. Afield did not provide adequate medical rationale in support of his conclusion on causal relationship.⁹ Dr. Afield did not adequately explain the medical process through which appellant could continue to suffer disabling residuals of her soft-tissue injury, an acute cervical strain. He did not present adequate findings on examination and diagnostic testing which supported his opinion. The Office has not accepted that appellant sustained any cervical disc condition on December 14, 2004 and Dr. Afield did not present a rationalized opinion supporting such a finding.¹⁰

⁸ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

⁹ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹⁰ Appellant submitted several reports in which attending chiropractors diagnosed cervical subluxations and disc bulges, but these reports would not constitute medical evidence as the chiropractors did not clearly indicate that these conditions were diagnosed from x-ray testing taken around the time of appellant's December 14, 2004 injury. See 5 U.S.C. § 8101(2); *Jack B. Wood*, 40 ECAB 95, 109 (1988).

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective August 17, 2005 on the grounds that she had no residuals of her December 14, 2004 acute cervical strain after that date.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' May 30, 2006 and August 18, 2005 decisions are affirmed.

Issued: October 20, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board